15.07.2024
Item No.
ML-50
Court No.5
Kaushik

W.P.A. 13505 of 2024

M/s. M H Trading Co. & Ors.
Versus
Assistant Commissioner of State Tax,
Tamluk Charge & Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
...For the petitioner

Mr. Anirban Ray, learned Government Pleader
Mr. T. M. Siddiqui
...For the State

1. The present writ petition has been filed, *inter alia*, challenging the order dated July 28, 2023 passed by the Appellate Authority under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act).

2. It is the petitioner's case that the registration of the petitioner no.1 was cancelled under the provisions of the said Act by an order dated January 19, 2022 for the petitioner no.1 having failed to submit its returns. Prior to the issuance of order of cancellation, the petitioner no.1 was served with a show-cause notice dated December 7, 2021, which was duly responded by the petitioner no.1. It is also the petitioners' case that despite the fact that the petitioner no.1 had all good intension to file returns, the order of cancellation had been issued. Being aggrieved the petitioner no.1 had filed an appeal under the provisions of Section 107 of the said Act, which came to be rejected by an order dated July 28,

2023 on the ground of delay in submission of the aforesaid appeal. It appears that the Appellate Authority by proceeding on the premise that the delay of filing of the appeal can only be condoned for a period upto one month beyond the time prescribed in Section 107 of the said Act and the petitioner no.1 having not filed the appeal within such time, the appeal was rejected. The said order forms the subject matter of challenge before this Court.

3. Having heard the learned counsels appearing for the respective parties and having considered the materials on record, it would appear that in this case, admittedly the petitioner no.1's registration under the said Act had been cancelled on the ground of non-filing of returns. It is not the case of the respondents that the petitioner no.1 had been adopting dubious process to evade tax. Taking note of the fact that suspension/revocation of license would be counterproductive and works against the interest of the revenue since, the petitioner no.1 in such a case would not able to carry on its business in the sense that no invoice can be raised by the petitioner no. 1 and ultimately would impact recovery of tax, I am of the view that the respondents should take a pragmatic view in the matter and permit the petitioner no.1 to carry on its business.

4. I find that it is the respondents' contention that the petitioner no.1 having not complied with the provisions of the said Act, the registration of the

petitioner no.1 under the said Act had been cancelled.

5. Be that as it may, for reasons noted hereinabove and having regard to the direction issued by the Hon'ble Division Bench of this Court in the case of ***Subhakar Golder v. Assistant Commissioner of State Tax, Serampore Charge (MAT 639 of 2024)*** on 9th April 2024, I propose to set aside the order dated January 19, 2022 cancelling the registration of the petitioner no. 1 under the said Act subject to the petitioner no. 1 filing its return for the entire period of default and making payment of requisite amount of tax, interest, fine and penalty, if not already paid.

6. It is made clear that if the petitioner no. 1 complies with the direction/condition noted above, within four weeks from the date of receipt of the server copy of this order, the registration of the petitioner no. 1 under the said Act shall be restored by the Jurisdictional Officer. However, if the petitioner no. 1 fails to comply with the direction as aforesaid, the benefit of this order shall not enure to the petitioner no. 1 and the writ petition would automatically stand dismissed.

7. For the purpose of compliance of the above directions, the respondents are directed to activate the portal within one week from date, so that the petitioner no. 1 can file its returns, pays requisite amount of tax, interest, fine and penalty, if not already paid.

8. As a sequel to the above, the order dated July 28, 2023 passed by the Appellate Authority under Section 107 of the said Act also stands set aside.
9. With the above directions the writ petition being WPA 13505 of 2024 is disposed of without any order as to costs.
10. Since, no affidavit has been called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.
11. All parties to act on the basis of the server copy of this order duly downloaded from this Hon'ble Court's official website.

(*Raja Basu Chowdhury, J.*)